

**In re: JACK OSTERHOUT d/b/a JACK'S PETTING ZOO.**  
**AWA Docket No. 01-0050.**  
**Decision and Order.**  
**Filed June 7, 2002.**

**AWA – Default – Failure to obtain license.**

Donald Tracy, for Complainant.  
Respondent, Pro se.

*Decision and Order issued by James W. Hunt, Administrative Law Judge.*

### **Preliminary Statement**

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the Act.

The Hearing Clerk served a copy of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, on the respondent on August 20, 2001. The letter of service informed the respondent that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent Jack Osterhout, d/b/a Jack's Petting Zoo, has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted as set forth herein by respondent's failure to file an answer, are adopted and set forth herein as Findings of Fact and Conclusions of Law.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

### **Findings of Fact and Conclusions of Law**

#### **I**

A. Jack Osterhout, hereinafter referred to as respondent, is an individual doing business as Jack's Petting Zoo, whose address is Box 344, Medora, North Dakota 58645.

B. The respondent, at all times material herein, was operating as an exhibitor as defined in the Act and the regulations.

#### **II**

## ANIMAL WELFARE ACT

On October 5, 1995, October 3, 1996, August 8, 1997, August 2, 1998, August 29, 1998, and June 10, 2000, the respondent has operated as an exhibitor as defined in the Act and the regulations, without being licensed, in willful violation of section 4 of the Act (7 U.S.C. § 2134) and subsection 2.1 of the regulations (9 C.F.R. § 2.1).

### Conclusions

1. The Secretary has jurisdiction in this matter.
2. The following Order is authorized by the Act and warranted under the circumstances.

### Order

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, respondent shall cease and desist from engaging in any activity for which a license is required under the Act and regulations without being licensed as required.

2. Respondent is assessed a civil penalty of \$3,200.00, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

The provisions of this order shall become effective on the first day after this decision becomes final.

Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final and effective October 1, 2002.]

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